2015 IL App (1st) 14-0615

FOURTH DIVISION
May 28, 2015

No. 1-14-0615

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

V&T INVESTMENT CORPORATION,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant,	)	of Cook County, Illinois,
	)	County Department, Chancery
v.	)	Division
	)	
1340 TOUHY CONDOMINIUM ASSOCIATION, an Illinois not-for-profit Corporation,	)	No. 13 CH 16418
	)	
	)	The Honorable
Defendant-Appellee.	)	Jean Pendergast Rooney,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly dismissed the plaintiff's declaratory judgment action for lack of standing. Once the plaintiff sold the property to a third-party purchaser, it had no actual interest in the outcome of the controversy wherein it sought a declaration of the exact amount of unpaid assessments it owed to the condo association.

¶ 2 This cause arises from a declaratory judgment action filed by the plaintiff, V&T Investment Corporation (hereinafter V&T) against the defendant, the Board of Managers of 1340 Touhy Condominium Association (hereinafter the condo association) asking the court to declare what amount of assessments it owed to the condo association after purchasing the property at a court

ordered foreclosure sale. In addition, V&T sought an injunction prohibiting the condo association from taking any legal action against the subsequent, third-party purchaser of the same property. The circuit court granted the condo association's motion to dismiss finding: (1) that V&T lacked standing to bring this action against the condo association; and (2) in the alternative, that it had failed to allege sufficient facts so as to proceed with causes of action for a permanent injunction and declaratory relief. V&T now appeals the dismissal of its declaratory judgment action, contending that it hand standing to pursue that claim. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us is minimal and reveals only the following undisputed facts and procedural history. On December 11, 2012, V&T purchased unit 203 of 1340 Touhy Condominiums in Chicago (hereinafter, the unit) at a court ordered foreclosure sale. The sale was confirmed on January 23, 2013, and V&T was given an order of possession. The parties do not dispute that prior to the foreclosure sale, in November 2012, the condo association filed an action to collect owed assessment fees from the former owner of the unit in the amount of $1544.03. At the time of the foreclosure sale, this balance remained unpaid.

¶ 5 On July 10, 2013, V&T filed an action for declaratory and injunctive relief against the condo association. In doing so, it alleged that after purchasing the unit at the foreclosure sale, on January 28, 2013, it contacted the management company for the condo association, requesting: (1) all relevant condominium documents; (2) any information relating to assessments; and (2) a key to the common areas of the building so as to be able to enter its unit. According to V&T, on February 6, 2013, the condo association responded by requesting that V&T pay all assessments it deemed due on the unit pursuant to section 9(g)(4) of the Condominium Property Act

(Condominium Act) (765 ILCS 605/9(g)(4) (West 2012)), and informing V&T that it would deny it access to the unit until those assessments were paid. When V&T threatened the management company with an unlawful detainer action, on March 16, 2013, the management company finally agreed to give V&T possession of the unit. Nevertheless, the parties continued to dispute the assessment amount owed by V&T.

¶ 6 In its complaint, V&T further alleged that while this dispute between it and the condo association was pending, it sold the unit to a third party. In doing so, V&T agreed with the third-party purchaser that it would remain responsible for "clearing up the amount due" on the assessments. In addition, on May 20, 2013, V&T sent a check to the condo association for $1872, the amount it deemed it owed in back assessments pursuant to section 9(g)(4) of the Condominium Act (765 ILCS 605/9(g)(4) (West 2012)), but the condo association returned the check.

¶ 7 In its complaint, V&T conceded that the association was not threatening any legal action against the new owner if V&T did not pay it the disputed assessment charges. Nevertheless, V&T requested: (1) that the court issue an injunction prohibiting the condo association from taking any legal action against the new third-party owner as to the disputed charges; and (2) that the court declare the amount that V&T actually owed the condo association pursuant to the Condominium Act (765 ILCS 605/9(g)(4) (West 2012)).

¶ 8 On August 23, 2013, the condo association filed a motion to strike and/or dismiss V&T's complaint pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)). In its motion the condo association argued that V&T lacked sanding to bring a suit for injunctive relief because it had "no real interest in the action brought and its outcome." Alternatively, the association argued that the complaint should be dismissed for

failing to state a cause of action upon which relief could be granted, because V&T failed to allege any facts supporting either injunctive relief or a declaratory judgment. In that vein, the condo association argued that V&T was not the current owner of the unit so that it could not request injunctive relief for a third party. In addition, the condo association asserted that because it had not taken any actions against V&T, as a past unit owner, any declaratory judgment as to the amounts owed by V&T to the association would constitute an "advisory opinion."

¶ 9 On December 19, 2013, after considering the pleadings submitted by the parties, the circuit court granted the condo association's motion to dismiss. In doing so, in a written opinion and order, the court found that V&T lacked standing to pursue both the injunctive and declaratory relief claims because it was no longer the unit owner and therefore had "no real interest in the action or its outcome." In addition, the court found that the issues raised in the complaint became moot when V&T sold the unit to a third party and therefore the elements for declaratory judgment could not be met. In doing so, the court specifically found that the unpaid assessments ran with the unit and were the responsibility of the new unit owner.

¶ 10 On January 21, 2014, V&T filed a motion to reconsider the court's order of dismissal. That motion was denied on February 11, 2014. V&T now appeals.

¶ 11 II. ANALYSIS

¶ 12 On appeal, V&T solely challenges the court's dismissal of its declaratory judgment action pursuant to section 2-619(a) (735 ILCS 5/2-619(a) (West 2012)). [1] A motion to dismiss pursuant to section 2-619(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619) (West 2012))

[1] From V&T's brief it appears that its choice not to appeal the dismissal of its injunctive relief claim, is based upon its allegation that after the appeal in this cause was filed, the condo

admits the legal sufficiency of the complaint (*i.e.*, all facts well pleaded), but asserts certain defects, defenses or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006); see also *Wallace v. Smyth*, 203 Ill.2d 441, 447 (2002). In ruling on a section 2-619 motion, all pleadings and supporting documents must be construed in a light most favorable to the nonmoving party, and the motion should be granted only where no material facts are in dispute and the defendant is entitled to dismissal as a matter of law. *Mayfield v. ACME Barrel Co.*, 258 Ill. App. 3d 32, 34 (1994). The relevant inquiry on appeal is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). Where a defendant satisfies its initial burden of going forward on a section 2-619 motion to dismiss, the burden then shifts to the plaintiff to establish that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven. *Van Meter v. Darien Park Dist*., 207 Ill. 2d 359, 377 (2003). Our review of the circuit court's grant of a motion to dismiss pursuant to section 2-619 is *de novo*. *Peregrine Financial Group, Inc. v. Futronix Trading, Ltd*., 401 Ill. App. 3d 659, 660 (2010).

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association pursued a claim against the third party owner for owed condo assessments, which the initial injunction intended to prevent, thereby requiring V&T to pay those assessments to the condo association so as to avoid any potential law suit with the third party owner. Regardless of V&T's reasons, however, our review is limited to those issues raised by V&T in its brief and those facts that were before the circuit court below. Accordingly, since V&T chooses to challenge only the dismissal of its declaratory judgment claim, our review is limited to that issue.

¶ 13 On appeal, V&T argues that the court erred in dismissing its declaratory judgment action on the basis of lack of standing. V&T admits that it sold the unit to the third party purchaser prior to filing its declaratory judgment action, but nonetheless asserts that it had standing to ask the court to declare the amount of assessments it owed to the condo association because pursuant to section 9(g)(1) of the Condominium Act (765 ILCS 605/9 (West 2012)) it had a personal lien on those assessments. For the reasons that follow, we disagree.

¶ 14 It is well settled that the doctrine of standing ensures that issues are raised only by the parties with a real interest in the outcome of the controversy. See *e.g.*, *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010); *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200, 206, 244 (2000); *Greer v. Illinois Housing Development Authorit*y, 122 Ill. 2d 462, 508 (1988). Standing is established by demonstrating some injury to a legally cognizable interest. *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 419-20 (2005). The claimed injury, whether actual or threatened, must be distinct and palpable, fairly traceable to the defendant's actions, and substantially likely to be prevented or redressed by the grant of the relief requested. *Chicago Teachers Union*, 189 Ill. 2d at 207.

¶ 15 In the context of a declaratory judgment action, to establish standing "there must be an actual controversy between adverse parties, with the party requesting the declaration possessing some personal claim, status, or right which is capable of being affected by the grant of such relief." *Greer*, 122 Ill. 2d at 493. Our supreme court has explained that:

> " 'Actual' in this context does not mean a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events. [Citations.] The

> case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof. [Citations.]" *Underground Contractors Ass'n v. City of Chicago*, 66 Ill. 2d 371, 375-76 (1977).

In addition, our supreme court has made clear that "merely having a curiosity about or a concern for the outcome of the controversy," is insufficient. *Underground Contractors Ass'n*, 66 Ill. 2d at 376. Rather, "the party seeking relief must possess a personal claim, status or right which is capable of being affected," and "[t]he dispute must *** touch the legal relations of parties who stand in a position adverse to one another." *Underground Contractors Ass'n*, 66 Ill. 2d at 376.

¶ 16 In the present case, the trial court found that V&T lacked standing to pursue its declaratory judgment action because it failed to establish an actual controversy existed. The court noted that V&T no longer owned the condo unit. It further explicitly held that since unpaid "assessments ran with the unit to the third-party owner" any declaration as to the amount of assessments V&T owed to the condo association were now moot. For the reasons that follow, we agree with this rationale.

¶ 17 Our courts have long held that the responsibility to pay condominium assessments is a covenant that runs with the land and is binding only upon title holders. *Pembrook Condominium Ass'n-One v. North Shore Trust & Savings*, 2013 IL App (2d) 130288, ¶ 13; see also *Newport Condominium Ass'n v. Talman Home Federal Savings & Loan Ass'n of Chicago*, 188 Ill. App. 3d 1054, 1059 (1988) ("[T]he obligation to pay condominium assessments is a covenant that runs with the land and is binding only upon title holders."); see also *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, ¶ 17 (noting that a payment of condominium assessments is "a lien on the property"); see also *Streams Sports Club, Ltd. v.*

Richmond, 109 Ill.App.3d 689, 695 (1982) ("[a] covenant to pay fees, giving plaintiff a lien on property for unpaid fees, runs with the land."); see also *Board of Directors of Olde Salem Homeowners' Ass'n v. Secretary of Veterans Affairs*, 226 Ill. App. 3d 281, 287 (1992); see also *Mathis v. Mathis*, 402 Ill. 60, 66 (1948) ("[w]here land is conveyed in consideration of a covenant by the grantee to support the grantor, or other persons designated, the covenant runs with the land and is binding upon subsequent owners."). Contrary to V&T's assertion, nothing in section 9(g)(1) of the Condominium Act (765 ILCS 605/9(g)(1) (West 2012)) negates this principle. In fact, very recently, this appellate court explicitly held that section 9(g)(1) of the Condominium Act (765 ILCS 605/9 (West 2012)) "creates a lien on the property, [and] not a personal judgment against the foreclosure purchaser, when assessment payments are not made for the first full month following the judicial foreclosure sale." *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co*., 2014 IL App (1st) 130962, ¶17; see also *Lake Hinsdale Village Condominium Ass'n v. Department of Public Aid*, 298 Ill. App. 3d 192, 196 (1998).

¶ 18 In the present case, it is undisputed that V&T did not pay any assessments to the condo association for the first full month following the judicial foreclosure sale. In fact, in its complaint for declaratory judgment, V&T admitted that at the time it filed its complaint, no such payments were made because the parties could not agree as to the amount. Accordingly, since V&T failed to pay any assessments for the first full month following the judicial foreclosure sale, any assessments owed became a lien on the property that ran with the land to the subsequent purchaser, and were no longer the personal judgment of V&T. As such, once V&T sold the unit to the third-party purchaser, that third-party purchaser became responsible for the assessments owed to the condo association and any accountability V&T had for that amount ceased by operation of law. See *e.g.*, *Pembrook Condominium Ass'n-One*, 2013 IL App (2d) 130288, ¶ 13;

see also *Newport Condominium Ass'n*, 188 Ill. App. 3d at 1059. Until (and only if) the condo association actually pursued an action against the third party purchaser and that third party purchaser in turn sued V&T, any declaration by the trial court as to the potential assessments by V&T owed would have been premature and purely advisory. As such, V&T had no actual claim or interest in the outcome of the controversy and the court properly dismissed the cause of action on the basis of lack of standing. See *1010 Lake Shore Ass'n*, 2014 IL App (1st) 130962, ¶ 17.

¶ 19 III. CONCLUSION

¶ 20 Accordingly, for all of the aforementioned reasons we affirm the judgment of the circuit court.

¶ 21 Affirmed.